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Report of the Working Group on the Universal Periodic Review*

Namibia

Addendum

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review

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1. The Government of the Republic of Namibia welcomes the recommendations made by member States during the universal periodic review of the Republic of Namibia at the 24th session of the Working Group of the Human Rights Council.

2. The Government of the Republic of Namibia is pleased to report that, out of 219 recommendations, 191 enjoy the support of the State and 28 are noted by the State.

I. Caprivi Trial[1]

3. Noted. Does not enjoy the support of the State for the following reasons:

(a) The Constitution of the Republic of Namibia under article 25 (2) provides for compensation for aggrieved persons whose fundamental rights and freedoms have been infringed. Article 25(2) of the Namibian Constitution provides that: "Aggrieved persons who claim that a fundamental right or freedom guaranteed by this Constitution has been infringed or threatened shall be entitled to approach a competent Court to enforce or protect such a right or freedom, and may approach the Ombudsman to provide them with such legal assistance or advice as they require, and the Ombudsman shall have the discretion in response thereto to provide such legal or other assistance as he or she may consider expedient";

(b) In addition to constitutional provisions to this effect, section 300 of the Criminal Procedure Act, Act 51 of 1977 provides for compensation in criminal litigation. Furthermore, legal aid may also be granted to applicants where the State agents violate that individual's right and it is not limited to criminal matters. Aggrieved persons may also institute civil lawsuits against the State for human rights violations;

c) It is worth to report that a number of civil claims against the Government emanating from the Caprivi Treason trial have been settled out of court. Others have been dismissed by the courts, other claims have been successful, while others are pending before the courts.

II. Children

A. Age of criminal responsibility[2]

4. Enjoy support of the State.

B. Birth registration[3]

5. Enjoy support of the State.

C. Child Care and Protection Act[4]

6. Enjoy support of the State.

D. Child labour[5]

7. Enjoy support of the State.

E. Definition of child[6]

8. Noted.

9. The Namibian Constitution provides that a child shall be persons under the age of sixteen (16) years. Although Namibia is a State party to the CRC, an amendment to the Namibian Constitution must be made to change the definition of a child to that of the CRC (Every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier). The State under review will conduct national consultations in this regard.

F. Disability[7]

10. Enjoy support of the State.

G. Violence against children and corporal punishment[8]

11. Enjoy support of the State.

III. Civil registration[9]

12. Enjoy support of the State.

IV. Education[10]

13. Enjoy support of the State.

V. Family[11]

14. Enjoy support of the State.

15. Article 14(3) of the Namibian Constitution provides that "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State". The State under reviews hereby states that these provisions are being implemented.

VI. Freedom of expression and freedom of the media[12]

16. Enjoy support of the State.

17. Namibia ranks high in global standing on freedom of the media. According to the 2016 rankings on World Press Freedom Index, Namibia ranks no. 17 out of 180 countries in the world, and no.1 in Africa. Freedom of Expression is protected by the Namibian Constitution. Article 21 of the Namibian Constitution guarantees the right to freedom of speech and expression, which includes freedom of the press and other media. The Namibian media is self-regulating through the office of the media ombudsman. The media ombudsman can only be appointed and removed from his or her position by the Editor's Forum of Namibia.

VII. Health care[13]

18. Enjoy support of the State.

(a) The Ministry of Health and Social Services (MoHSS) launched and started with the implementation of the MoHSS Roadmap in 2014. The Roadmap (2014) provides a strategic long-term framework for governance, human resource development, *health facility upgrading and the establishment of specialised services and institutions*. It will be operationalised through annual action plans, national development plans, the medium-term expenditure framework, development assistance and public private partnerships.

(b) The upgrading and establishment of infrastructure is one of the priorities emphasized in the Roadmap. The Roadmap envisages that by 2030, there will be three (3) Class A hospitals. The additional two (2) Class A hospitals will be in Oshakati and Rundu respectively. The Ministry of Health and Social Services (MoHSS) further envisaged to have four (4) Class B Level I hospitals (Katutura, Onandjokwe, Rundu and Swakopmund) and six (6) Class B Level 2 hospitals (Otjiwarongo, Katima Mulilo, Engela, Keetmanshoop, Outapi and Opuwo). The MoHSS targets to build five (5) new district hospitals by 2023, sixty (60) new health centres and three hundred and fifty (350) clinics and to have five thousand (5 000) community health posts by 2023.

VIII. HIV/AIDS[14]

19. Enjoy support of the State.

IX. Human rights education and promotion[15]

20. Enjoy support of the State.

X. Human rights institutions[16]

21. Enjoy support of the State.

XI. Human trafficking[17]

22. Enjoy support of the State.

XII. International Criminal Court

137.47. Enjoy support of the State.

Namibia has already ratified the said statute.

137.48. Noted.

This recommendation does not enjoy the support of the State.

137.49. Noted.

This recommendation does not enjoy the support of the State.

137.50. Noted.

This recommendation does not enjoy the support of the State.

137.75. Noted.

This recommendation does not enjoy the support of the State.

23. Consultations are under way with the African Union on the way forward regarding this matter.

XIII. Judicial system[18]

24. Enjoy support of the State.

25. The Government currently runs thirty four (34) periodic Magistrate Courts in outlying areas of the country. Although Namibia does not use the term mobile court, periodic courts serve a similar purpose to mobile courts.

26. The Combating of Domestic Violence Act, Act No. 4 of 2003, provides an extensive definition of domestic violence which is defined as physical abuse, sexual abuse, economic abuse, verbal abuse, emotional abuse and psychological abuse, intimidation, harassment, entering the property of the complainant without the complainant's consent, by persons in a domestic relationship. The Domestic Violence Act provides for the issuing of protection orders and police warnings in domestic violence matters. In addition, it provides penal provisions.

XIV. Land reform[19]

27. Enjoy support of the State.

XV. Legal aid[20]

28. Enjoy support of the State.

29. The Government has established a legal aid scheme, which provides legal representation to indigent person who cannot afford the services of a private legal practitioner. The Legal Aid Act, No.29 of 1990 provide for granting of legal aid in civil and criminal matters to persons whose means are inadequate to enable them to engage practitioners to assist and represent them.

XVI. Lesbians, gays, bisexuals, transgender and intersexed[21]

30. Noted. This recommendation does not enjoy the support of the State.

(a) Although this recommendation does not enjoy Namibia's support, the Namibian Government does not persecute members of the Lesbians, Gays, Bisexual, Transgender and Intersexed (LGBTI) community in Namibia.

(b) Article 10 of the Namibian Constitution provides for equality and freedom from discrimination. It states that:

(i) All persons shall be equal before the law;

(ii) No persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.

(c) There are no records of cases of harassment or discrimination reported to the Ombudsman or the Namibian police. The reality and the legal history of the Namibian

people does not suggest that legalising same sex marriages is important or beneficial to our legal and cultural system.

(d) The Government considers the issue of same sex marriages in Namibia as a non-issue. Nevertheless, the Government has no intention to repeal any laws including the common law crime of sodomy.

XVII. Marginalised communities[22]

31. Enjoy the support of the State.

XVIII. Mental health[23]

32. Enjoy the support of the State.

(a) There is currently only one mental hospital in Namibia. The assessment of the current situation with regard to specialized mental hospitals country wide has already started and the Ministry of Health and Social Services (MoHSS) envisages having fully functional specialized mental hospitals in Windhoek, Oshakati and Rundu by the year 2018. The Government also plans to build another Mental Hospital in Keetmanshoop by the year 2023.

(b) Article 8 (2) (b)[24] of the Namibian Constitution which protects the right to human dignity may be read in conjunction with the right to equality and non-discrimination enshrined in Article 10 of the Namibian Constitution since discrimination also violates human dignity.[25] All legal safeguards which protect the rights of persons in psychiatric institutions are contained in the Mental Health Act (Act.No.18) of 1973, as amended, as well as in the Criminal Procedure Act (Act.No.51) of 1977.

XIX. National Laws[26]

33. Enjoy the support of the State.

34. Article 15 of the Namibian Constitution provides that "Children shall have the right from birth to a name, the right to acquire a nationality and subject to legislation enacted in the best interest of children, as far as possible the right to know and be cared for by their parents". The State under review hereby confirms that children born in the territory of Namibia whose parents are unknown may obtain Namibian Nationality.

XX. National Human Rights Action Plan[27]

35. Enjoy the support of the State.

XXI. National Action Plan on gender based violence[28]

36. Enjoy the support of the State.

XXII. Participation in decision making[29]

37. Enjoy the support of the State.

XXIII. Poverty[30]

38. Enjoy the support of the State.

XXIV. Prison conditions[31]

39. Enjoy the support of the State.

XXV. Sign, ratify or accede to international instruments

A. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families[32]

40. Noted. These recommendations do not enjoy the support of the State.

B. Optional Protocol to the Convention Against Torture[33]

41. Enjoy the support of the State.

C. Optional Protocol to the International Convenant on Economic, Social and Cultural Rights[34]

42. Enjoy the support of the State.

D. Optional Protocol to the Convention on the Rights of the Child[35]

43. Enjoy the support of the State.

E. UNESCO Convention on Discrimination in Education[36]

44. Enjoy the support of the State.

F. International Convention for the Protection of All Persons from Enforced Disappearance[37]

45. Enjoy the support of the State.

G. Domestic Workers Convention[38]

46. Enjoy the support of the State.

H. Convention on Statelessness[39]

47. Enjoy the support of the State.

I. Outstanding international human rights instruments[40]

48. Enjoy the support of the State.

XXVI. Special procedures[41]

49. Noted. These recommendations do not enjoy the support of the State.

XXVII. Treaty bodies[42]

50. Enjoy the support of the State.

XXVIII. Water and sanitation[43]

51. Enjoy the support of the State.

XXIX. Women and girl rights

A. Gender equality[44]

52. Enjoy the support of the State.

B. Gender based violence[45]

53. Enjoy the support of the State.

XXX. Youth[46]

54. Enjoy the support of the State.

XXXI. Prisons[47]

55. Enjoy the support of the State.

XXXII. People living with disabilites[48]

56. Enjoy the support of the State.

XXXIII. National Action Plan to implement UN guiding principles on business and human rights[49]

57. Enjoy the support of the State.

XXXIV. Implement policies dealing with the stigma and discrimination against people living with HIV/AIDS[89]

58. Enjoy the support of the State.

Notes

[1] Recommendation 137.176.
[2] Recommendations 137.124 and 137.167.
[3] Recommendations 137.120, 137.121, 137.122 and 137.123.
[4] Recommendations 137.53, 137.54 and 137.55.
[5] Recommendations 137.160 and 137.161.
[6] Recommendation 137.52.
[7] Recommendation 137.209.
[8] Recommendations 137.125, 137.126, 137.127, 137.128, 137.129, 137.130, 137.131 and 137.132.
[9] Recommendation 137.87.
[10] Recommendations 137.198, 137.199, 137.200, 137.201, 137.202, 137.203, 137.204, 137.205, 137.206, 137.207 and 137.208.
[11] Recommendations 137.177 and 137.178.
[12] Recommendation 137.179.
[13] Recommendations 137.190, 137.194, 137.195, 137.196 and 137.197.
[14] Recommendations 137.191, 137.192 and 137.193.
[15] Recommendations 137.93, 137.94, 137.95 and 137.96.
[16] Recommendations 137.78, 137.79 and 137.80.
[17] Recommendations 137.64, 137.76, 137.77, 137.162 and 137.163.
[18] Recommendations 137.164, 137.165, 137.173, 137.174 and 137.175.
[19] Recommendations 137.88, 137.89, 137.90 and 137.91.
[20] Recommendation 137.169.
[21] Recommendations 137.69, 137.70, 137.71, 137.72 and 137.73.
[22] Recommendations 137.212, 137.213, 137.214, 137.215, 137.216, 137.217, 137.218 and 137.219.
[23] Recommendation 137.51.
[24] Article 8 of the Constitution of Namibia states that: (1) The dignity of all persons shall be inviolable. (2) (a) In any judicial proceedings or in other proceedings before any organ of the State, and during the enforcement of a penalty, respect for human dignity shall be guaranteed. (b) No persons shall be subject to torture or to cruel, inhuman or degrading treatment.
[25] Naldi, ibid at p. 44.
[26] Recommendations 137.56 and 137.74.
[27] Recommendation 137.82.
[28] Recommendations 137.83 and 137.84.
[29] Recommendations 137.180 and 137.181.
[30] Recommendations 137.182, 137.185, 137.186, 137.187, 137.188 and 137.189.
[31] Recommendations 137.153, 137.154, 137.155, 137.156, 137.166 and 137.168.
[32] Recommendations 137.3–137.12 and 137.40.
[33] Recommendations 137.16–137.30, 137.65 and 137.86.
[34] Recommendations 137.14, 137.41, 137.42 and 137.43.
[35] Recommendations 137.15 and 137.44.
[36] Recommendation 137.31.
[37] Recommendations 137.32–137.39.
[38] Recommendation 137.46.
[39] Recommendation 137.45.
[40] Recommendations 137.1, 137.2 and 137.13.
[41] Recommendations 137.101, 137.102, 137.103, 137.104, 137.105, 137.106 and 137.107.
[42] Recommendations 137.98, 137.99, and 137.100.
[43] Recommendations 137.92, 137.183 and 137.184.
[44] Recommendations 137.57, 137.58, 137.59, 137.60, 137.61, 137.62, 137.63, 137.66, 137.67, 137.68,

137.81 and 137.108–137.118.

[45] Recommendations 137.133–137.152 and 137.170–137.172.

[46] Recommendation 137.97.

[47] Recommendations137.157, 137.158 and 137.159.

[48] Recommendations 137.210 and 137.211.

[49] Recommendation 137.85.

[50] Recommendation 137.119.